

**United States Department of Labor
Employees' Compensation Appeals Board**

L.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bunker Hill, IL, Employer**

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**Docket No. 13-474
Issued: May 16, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 26, 2012 appellant, through counsel, filed a timely appeal from a November 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant sustained bilateral knee injury as a result of her federal employment.

FACTUAL HISTORY

On July 19, 2011 appellant, then a 51-year-old regular rural carrier, filed an occupational disease claim alleging that as a result of working 29 years at the employing establishment her knees were weak and worn out. She indicated that she was first aware of her condition in April 2011 and that it was caused or aggravated by her employment May 9, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

Along with her claim, appellant submitted a July 7, 2011 electrocardiogram (EKG) and laboratory reports from Hillsboro Area Hospital dated July 8, 2011.

By letter dated August 8, 2011, OWCP advised appellant of the deficiencies in her claim and that it required additional factual and medical evidence. It requested a comprehensive medical report from a physician. Appellant was given 30 days to submit the requested information in support of her claim. No new evidence was received.

By decision dated October 17, 2011, OWCP denied appellant's claim. It found that appellant had not submitted any medical evidence containing a medical diagnosis in connection with the work events.

On October 17, 2012 appellant, through her attorney, requested reconsideration.

Several medical reports from Dr. Daniel Adair, a Board-certified orthopedic surgeon, were submitted. These included medical reports dated May 9, 25 and 31, June 23, July 22, August 3, 9 and 19, September 26, October 24 and September 26, 2011. In his May 9, 2011 report, Dr. Adair noted that appellant had left knee pain and had surgery on her left knee about five years ago. He diagnosed knee joint pain. In subsequent reports, Dr. Adair continued to diagnose knee joint pain. On May 25, 2011 he noted that appellant has not responded well to multiple conservative methods and measures. Dr. Adair performed an elective debridement of the left knee and debridement patellofemoral joint. He reported on August 9, 2011 that he had performed a right knee arthroscopy on July 11, 2011. On August 3, 2011 Dr. Adair performed an elective left total knee arthroplasty. In an August 5, 2011 report, he provided a postoperative diagnosis of degenerative arthritis of the left knee.

A July 7, 2011 hospital report from Hillsboro Area Hospital, a history and physical assessment dated August 2, 2011 and a magnetic resonance imaging (MRI) scan dated May 9, 2011 were also received along with a February 21, 2011 medical report related to appellant's wrists.

By decision dated November 29, 2012, OWCP modified the denial of appellant's claim to reflect causal relationship was not established.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her claimed knee condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence establishing that her knee conditions were causally related to factors of her employment. For this reason, appellant has not discharged her burden of proof.

Appellant submitted several reports from her treating physician, Dr. Adair who diagnosed joint knee pain and eventually performed an elective arthroscopic procedures of both knees, debridement patellofemoral joint as well as an elective left total knee arthroplasty. In his August 5, 2011 report, Dr. Adair diagnosed degenerative arthritis of the left knee. He, however, did not offer any opinion as to whether appellant's bilateral knee conditions arose from or were aggravated by her work activities.⁶ Thus, Dr. Adair's opinion is of limited probative value.

The other evidence of record, including diagnostic testing, does not offer an opinion on causal relationship of appellant's knee conditions. Thus, these reports are of limited probative value.

There is no probative, rationalized medical opinion, based upon an accurate employment history, that the diagnosed knee conditions were causally related to employment factors in the current claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her conditions were caused, precipitated or aggravated by her employment is

⁴ *Id.*

⁵ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her knee conditions were causally related to her employment in the current claim.

On appeal, appellant's attorney contends OWCP's decision is contrary to fact and law. As noted, appellant has not met her burden of proof in establishing that her knee conditions were causally related to her employment in the current claim. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that her knee conditions were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).